LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S
FILED
AUG 13 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. 61

ETHEL MEYER,

Petitioner,

—vs.—

UNITED STATES OF AMERICA,

Respondent.

IN OPPOSITION AND OBJECTION TO MOTION OF LILLIAN WINTNER FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

SAMUEL W. SHERMAN
1451 Broadway
New York 36, N. Y.
Counsel of Record for Petitioner in Opposition and Objection to Motion of Lillian Wintner for Leave to File Brief as Amicus Curiae

MARTIN A. GETTINGER,
ROBERT S. GETTINGER
1407 Broadway
New York 18, N. Y.
Associate Counsel

IN THE

Supreme Court of the United States

October Term, 1963

No. 61

ETHEL MEYER,

Petitioner,

—vs.—

UNITED STATES OF AMERICA,

Respondent.

IN OPPOSITION AND OBJECTION TO MOTION OF LILLIAN WINTNER FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

It is respectfully submitted that the motion of Lillian Wintner for leave to file brief as *amicus curiae* should be denied since there has been no showing by the movant as to any facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties, and their relevancy to the disposition of the case.

The additional question on page 2 of the motion, which movant seeks to inject in this case, is irrelevant, immaterial and has no bearing upon the questions to be determined by this Court. On page 5 of the proposed brief of Lillian Wintner as *amicus curiae*, it is stated as follows: "The following argument proceeds on the assumption that the United States had a lien on the cash surrender value of Mr. Meyer's insurance policies during his lifetime, notwithstanding the fact that Mr. Meyer pledged the policies to a

bank as collateral security for a loan prior to the government's assessment of the income tax deficiencies." This argument is contrary to the petitioner Ethel Meyer's contentions herein and is apparently contrary to the position taken by movant Lillian Wintner before the District Court in her case (*United States* v. *Wintner*, 200 F. Supp. 157 (D. C. N. D. Ohio 1961), aff'd 312 F. 2d 749 (6th Cir. 1963)). At page 159, the District Court stated:

> "Defendant contends that the present action is barred by *res judicata*, that no lien ever arose which the Government may enforce in this action, and that, in any event, the cash surrender values of the policies were exhausted in satisfying taxpayer's debts to the bank."

The facts in the movant Lillian Wintner's case are inapposite and clearly distinguishable from the facts at bar. The facts in movant's case are very similar to those appearing in *United States* v. *Behrens*, 230 F. 2d 504 (2d Cir. 1956), cert. denied, 351 U. S. 919. In the *Behrens* case (which is fully discussed in petitioner's brief herein on the merits) as well as in movant Lillian Wintner's case an assessment of a tax lien was made first, thereby creating a lien on all the property, which was the cash surrender values of the policies. Subsequently the bank loaned the insured monies and received assignments of the policies. However, as stated by the Court in the *Wintner* case (200 F. Supp. 157, 160):

> "Since the Collector never filed the notice of assessment given Wintner on April 21, 1947, we may assume, as defendant contends, that the bank's lien was superior to that of the plaintiff."

In both the *Behrens* and the *Wintner* cases, therefore, government tax liens did attach, but they became secondary

liens, subject to the liens of the banks by reason of the non-filing of notices of assessments.

In the case at bar, under the factual situation presented herein, the government's tax liens never attached to any cash surrender value of the policies since the assignments and pledges were made prior to any tax liability or claim arising as well as prior to any assessment and notice and demand for payment.

It is respectfully submitted that the questions raised by petitioner herein before this Court, on the petition for a writ of certiorari and on the writ of certiorari are adequate and complete, and that the granting of the motion for the filing of a brief *amicus curiae* by Lillian Wintner will serve no useful purpose and should be denied.

Respectfully submitted,

SAMUEL W. SHERMAN
1451 Broadway
New York 36, N. Y.
Counsel of Record for Petitioner in Opposition and Objection to Motion of Lillian Wintner for Leave to File Brief as Amicus Curiae

MARTIN A. GETTINGER
ROBERT S. GETTINGER
1407 Broadway
New York 18, N. Y.
Associate Counsel